

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 STATE OF TEXAS, ET AL * 1:14-CV-00254
5 VS. * 10:12 a.m.
6 UNITED STATES OF AMERICA, ET * AUGUST 19, 2015
AL

7 HEARING ON MOTIONS
8 BEFORE THE HONORABLE ANDREW S. HANEN
9 Volume 1 of 1, Pages 1 - 50

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THE COURT: All right. Be seated. We're here in B-14-CV-254. Ms. Colmenero, who is with you representing the states?

MS. COLMENERO: Your Honor, I'm joined by Adam Bitter from the Texas Attorney General's office. We're here on behalf of the plaintiff states.

THE COURT: Ms. Ricketts, who is here with you?

MS. RICKETTS: Good morning, Your Honor. I have Jim Gilligan from my office, Department of Justice.

I also have Jonathan Meyer, Deputy General Counsel at DHS and Jessica Schau-Nelson and Evan Franke from CIS and then Mr. Hu, whom you know.

THE COURT: Okay. Let me start with the easy part, maybe. I have what appears to be an agreed amended motion for entry of protective order. I hate to ask this. Is it agreed?

MS. RICKETTS: It is, Your Honor.

MS. COLMENERO: It is, Your Honor.

THE COURT: All right. Then I'm signing it.

Now we have got two different topics I want to cover. As you know from the last time we met, my goal was and still is to try to resolve all the ancillary issues that might otherwise detract from a decision on the merits or from starting to even consider the merits before we get

1 the case back because if I'm affirmed, we have got a long
2 road ahead of us; and if I'm reversed, depending on how
3 I'm reversed, I've still got to deal with this matter. So
4 my goal is to get rid of this one way or the other.

10:14:46

5 Okay. The first issue that I want to talk about are
6 the actual violations of the injunctions and the remedy;
7 and I have looked at the Government's filings, including
8 the one from last night or yesterday evening. And while
9 I'm not clear on everything, it looks like we're making
10 substantial progress in resolving all this.

10:15:15

11 Ms. Ricketts, who is going to address that?

12 MS. RICKETTS: Your Honor, with your permission,
13 Mr. Gilligan will address the compliance issues; and then,
14 I will address the joint advisory issues.

10:15:29

15 THE COURT: Great. That's basically how I have
16 that divided in my mind as well. All right.

17 All right. Mr. Gilligan, let me ask you: I have used
18 the figures that you guys have provided; and it looked
19 like -- at least by my math, and it's always bad when
20 lawyers start to do math -- that we had of the original
21 2,128 we got -- and the real "we", you guys, got most
22 everything resolved with the exception of 11 individuals.
23 Am I in the ballpark on that?

10:15:55

24 MR. GILLIGAN: You are in the ballpark, Your
25 Honor. Actually, the story is that of the -- both the

10:16:26

1 2,128 post-injunction issuances plus the 484 re-mailed
2 EADs a total of about 2,612 or so. We have over 2,600 of
3 those back or accounted for, and the 11 reflects the
4 outstanding number for both groups in total.

10:16:53

5 THE COURT: Okay. For some reason I had 11 from
6 one group and 11 from the other. So I had in my mind 22
7 that were outstanding.

10:17:07

8 MR. GILLIGAN: That was indeed, Your Honor, you
9 are correct, the status on July 31st, when we made our
10 July 31st filing. As of yesterday, when we made our
11 supplemental filing, we were down to 11 total between the
12 two groups.

10:17:23

13 THE COURT: All right. And as I understand from
14 yesterday's filings with regard to these -- and we'll talk
15 about the other 50 in a minute, but that the Government is
16 still trying to take measures to fix that with regard to
17 these outstanding 11 people?

10:17:41

18 MR. GILLIGAN: Yes, Your Honor. That is correct.
19 In fact, we have already begun. We have already sent
20 letters out where we have contact information, and we are
21 attempting to continue to reach people by telephone and
22 e-mail where we have the necessary contact information.

23 I can give Your Honor a little bit of detail about the
24 breakdown of the 11.

10:17:56

25 THE COURT: Okay. If you will, go ahead.

1 MR. GILLIGAN: Five of them are cases where as
2 far as we can tell it appears that they had moved and are
3 now at new addresses without having informed the agency as
4 they should have. So it may be that these five
5 individuals never received any of the notices and did not
6 reside at the addresses where we made home visits. And so
7 we're trying to reach out to them at the new addresses to
8 see if we can get the cards retrieved.

9 And if that does not prevail, we will send USCIS
10 personnel out to knock on the doors and see if we can
11 obtain the cards that way.

12 Of course, we are using whatever contact information
13 we have in those cases as well.

14 There are four other cases where we had succeeded in
15 making contact of one form or another either with the
16 individual cardholder or a relative or an associate and
17 were told that they would comply. They would send the
18 card back or provide us with a certification of good cause
19 for not doing so.

20 But that did not happen by the July 30th deadline that
21 we had established. But given that these individuals had
22 at least or their associates had at least expressed a
23 willingness to do what was required, we have determined
24 that we will continue to reach out to them with the
25 contact information we have as necessary, pay further home

1 visits, if other means don't prove successful, and do what
2 we can to retrieve those four.

3 That leaves two final cases out of the 11 where we
4 have not been successful in making contact with anyone.

10:19:35

5 It appears, at least in one of those cases, that the
6 individual may have moved. So we were told by his
7 landlord. And we have no additional contact information,
8 no new address of that nature.

10:19:52

9 We do have some telephone information. We have a new
10 number for one of them. We have a new number for the
11 other's representative. And so we're going to try to
12 continue to reach out to these two individuals by those
13 means. But it may be that we have reached a dead end at
14 least in these two cases.

10:20:08

15 THE COURT: All right. But with respect to any
16 records that the DHS is keeping or the immigration service
17 or however you want to describe it, has the Government
18 changed their records to reflect what should accurately be
19 the situation?

10:20:26

20 MR. GILLIGAN: Well, in all 11 cases, Your Honor,
21 all of these individuals have been terminated and notices
22 have been issued to them telling them that their deferred
23 action and employment authorization has been revoked and
24 they are told that use of their cards is not authorized
25 and updates have been made in the appropriate databases.

10:20:40

1 THE COURT: Then we have the 53 that apparently
2 got released by accident in Nebraska.

3 MR. GILLIGAN: Yes, Your Honor. That's correct.
4 Nebraska Services.

10:20:56

5 THE COURT: Where are we there?

10:21:10

6 MR. GILLIGAN: We have all 53 of them either
7 retrieved or accounted for, Your Honor. I believe that is
8 reported in the declaration we filed yesterday as well.
9 We have made the appropriate updates in the agency's
10 databases and in the databases that support the E-Verify
11 and SAVE systems.

10:21:34

12 THE COURT: All right. And then, just for my
13 edification, this failure to stop the printing queue or
14 however it were, Mr. Gilligan, that actually happened
15 quite a while ago?

16 MR. GILLIGAN: Yes.

17 THE COURT: You didn't discover it happened until
18 just recently. Am I right about that?

10:21:42

19 MR. GILLIGAN: That's right. The reason we
20 didn't discover it, Your Honor, is that what happened was
21 that the Nebraska Service Center in an aggressive effort
22 to try to come into compliance with the Court's injunction
23 back in February, they electronically converted the
24 authorized terms in a number of cases from three years to
25 two years shortly after the injunction.

10:21:59

1 And this was successful in a number of those cases in
2 preventing the cards from being issued because the data
3 had not been forwarded from the official records system
4 CLAIMS 3 to the card production system. And so those
5 cards were held.

10:22:17

6 But then in these other approximately 50 cases,
7 unfortunately, by the time the electronic conversion was
8 made in CLAIMS 3, the data authorizing the production of
9 those approximately 50 cards had already gone forward; and
10 so, they were not stopped.

10:22:30

11 THE COURT: But the folks in charge of that
12 facility they understand what their obligation is now, and
13 that whole problem is not going to reoccur?

14 MR. GILLIGAN: That problem should not reoccur,
15 Your Honor. We --

10:22:43

16 THE COURT: Please don't say it like that because
17 it implies that some other problem will.

18 MR. GILLIGAN: Your Honor, as much as I would
19 love to, I hesitate when we're dealing with electronic
20 systems as complicated as these to provide the Court a
21 110 percent guarantee. But we have -- we have taken a
22 number of preventive measures such as in the system now it
23 is the system will not allow anybody to put in an
24 authorization for deferred action or employment
25 authorization greater than two years. It simply cannot be

10:22:57

10:23:15

1 done.

2 And at the direction of Director Rodriguez, the agency
3 has scoured its databases over and over again to see if
4 there are any other pockets of cards like the 53 that we
10:23:34 5 don't know about. At this point in time, we have no
6 reason to believe that there are any further.

7 THE COURT: What I understood from the last
8 advisory is it's the agency's goal to try to have this
9 wrapped up by September 18th?

10:23:48 10 MR. GILLIGAN: Yes, Your Honor. That's our
11 objective.

12 THE COURT: Okay. All right. Then let's shift
13 gears. Let's talk about the problem that we started with
14 that we're back on track on now which is the ones that
10:24:04 15 happened that got approved before the injunction.

16 MR. GILLIGAN: Okay. May I make a quick
17 clarification before we make that shift in gears, Your
18 Honor?

19 THE COURT: Go ahead.

10:24:16 20 MR. GILLIGAN: Concerning the E-Verify system, we
21 stated in our July 31st papers that a result of the
22 updates that are made to our systems, state agencies and
23 employers can accurately verify individuals' two-year
24 terms of deferred action and work authorization in the
10:24:33 25 state and E-Verify systems. In particular, that appears

1 in Paragraph 5 of the Director's July 31st declaration.

2 In preparing our filing yesterday we determined that
3 the statement is somewhat imprecise so far as E-Verify is
4 concerned. It's on the money with SAVE; but we provided a
10:24:54 5 clarification in Footnote 2 of the supplemental
6 declaration we submitted yesterday, which explains that
7 when employers submit a query to the E-Verify system it
8 informs the employer whether or not the individual is
9 authorized to work.

10:25:14 10 And then, 90 days prior to the expiration of the
11 individual's authorized term the system then sends a
12 reminder to the employer that the individual's work
13 authorization must be reverified.

14 So in the case of individuals whose terms have been
10:25:30 15 converted from three years to two, the employers, if they
16 obtain work, will receive a reverification notice 90 days
17 before the two-year term expires.

18 THE COURT: Okay.

19 MR. GILLIGAN: So Your Honor wished to switch
10:25:47 20 gears and talk about the 108,000 approvals prior to the
21 injunction?

22 THE COURT: Right. And I want to talk about the
23 efforts that have been made to reach some resolution on
24 what to do about those, if anything.

10:26:03 25 MR. GILLIGAN: Well, Your Honor, in terms of the

1 details of the parties' meet-and-confer on that, I would
2 defer to Ms. Ricketts.

3 Our bottom line on that issue is, in light of the
4 statements that plaintiffs have made in the parties' joint
10:26:19 5 status report, that if we are to seriously entertain the
6 notion of converting 100,000 cases from three years to two
7 and further then attempting to retrieve 108,000 employment
8 authorization cards, that that's a matter that needs to be
9 briefed given the magnitude of the undertaking that's
10:26:39 10 being contemplated.

11 But in terms of discussions in the meet-and-confer
12 process, as I said, I would defer to Ms. Ricketts.

13 THE COURT: Let me ask one other thing; and,
14 Mr. Gilligan, I don't know if you or Ms. Ricketts is the
10:26:53 15 person.

16 I understood from what was filed, the joint filing,
17 that there seems to be -- and again, I'm talking about the
18 post-injunction folks, the 2,500 --

19 MR. GILLIGAN: Uh-huh.

10:27:07 20 THE COURT: -- or so individuals, that there is
21 some argument between the parties about whether if the
22 states take any kind of corrective action there has to be
23 some kind of notification or the Federal Government would
24 like notification of any corrective action.

10:27:27 25 Is that your bailiwick or is that Ms. Ricketts'?

1 MR. GILLIGAN: Again, I defer to Ms. Ricketts on
2 that question.

3 THE COURT: All right.

4 MR. GILLIGAN: If you wish to address that issue
10:27:35 5 now, Your Honor, I will allow her to do that.

6 THE COURT: Thank you, Mr. Gilligan.

7 MS. RICKETTS: Thank you, Your Honor.

8 From our perspective the issue is -- was part of the
9 negotiation over the protective order; and we had asked,
10:27:48 10 given the sensitive nature of the information that we were
11 providing to the plaintiff states and the fact that the
12 plaintiff states did not want to use the SAVE system to
13 undertake any corrections that they determined they wanted
14 to undertake, SAVE system being the most up-to-date
10:28:04 15 information, that all we wanted was an e-mail that
16 indicated if a state agency was going to undertake a
17 corrective action so that we could try to make sure that
18 the information was as up-to-date as possible and, also,
19 because if it is not or if the individual against whom
10:28:20 20 they took that action believed the DHS information which
21 we had provided to the plaintiff states was inaccurate,
22 they have the right to approach DHS and go through a
23 process to request a corrected record.

24 So we wanted a heads-up, if you will, that that might
10:28:38 25 happen in a particular state. It was not because we

1 suggested it was a legal requirement as Texas suggests.
2 It was simply a courtesy that we were asking. We did not
3 insist on it in the protective order because we were
4 trying to complete those negotiations and get the
10:28:53 5 protective order signed as quickly as possible so that we
6 could get the PII information to the plaintiff states.
7 That's why we didn't include it.

8 THE COURT: What have the states been provided?

9 MS. RICKETTS: We have provided them for the
10:29:05 10 2,600 post-injunction EADs a state-by-state breakdown for
11 the plaintiff states in all instances and for the
12 re-mailings for all states.

13 THE COURT: I mean, do they know, like, name and
14 address of the 2,600?

10:29:18 15 MS. RICKETTS: That's actually the PII
16 information that we will provide to them. We have agreed
17 to provide the date of birth, the name, address, Social
18 Security number, the EAD number and some specific SAVE
19 information, the static SAVE information, for all of those
10:29:32 20 individuals.

21 THE COURT: What about for the 108,000?

22 MS. RICKETTS: We have provided for the 108,000 a
23 state-by-state breakdown for all of them and approximate
24 SAVE queries for driver's licenses from November 2014
10:29:44 25 through July 2017.

1 And, of course, throughout the meet-and-confer process
2 we have provided them with confirmation of where we were
3 in the corrective actions. So they have everything except
4 for the PII.

10:29:54 5 I believe we have also agreed to provide the same
6 information as for the 2,600 for the most recent 50 or so.
7 We have not yet provided that, but we have agreed to
8 provide that.

9 THE COURT: Okay. And is there a problem with
10:30:07 10 providing that same information for the 108,000? I know
11 it's a lot of work but I mean --

12 MS. RICKETTS: It would be a significant amount
13 of work, Your Honor, to do that for the 108,000.

14 So to where we left it, as I understand it -- and
10:30:23 15 Ms. Colmenero can speak to this more directly -- is that
16 they had asked for this information which we agreed to
17 provide so they could determine whether they wanted the
18 additional information for the 108. I don't want to speak
19 for her.

10:30:35 20 THE COURT: Ms. Colmenero, let's start with the
21 2,500 group. It looks to me, I mean, like the Government
22 has done its best to try to fix the problem here, which is
23 my term, from the last hearing.

24 Do the states have any problem with that, what they
10:30:56 25 have done with the 2,500?

1 MS. COLMENERO: With the approximately 2,600
2 corrections or remediation efforts that have taken place
3 and the exchange of the PII, you know, the states
4 appreciate the efforts that the Federal Government has
5 gone through.

10:31:11

6 I think where the states end up with respect to these
7 post-injunction violations -- and we alerted the Court to
8 this in our last response to the defendants' motion to
9 cancel the hearing -- is that we expect full compliance
10 with the injunction. We don't necessarily expect
11 substantial compliance, which is what we understand that
12 they are endeavoring to take.

10:31:26

13 And so, our concern is with ongoing and future
14 compliance with the Court's injunction. Because even in
15 the last declarations that have been filed, the way we
16 read them is that there are still ongoing efforts to
17 determine whether or not there are additional
18 post-injunction violations. And we are now here six
19 months after the Court's February 16th injunction, and
20 we're still talking about complying with the Court's
21 injunction. And we see that as problematic.

10:31:40

10:31:55

22 So from our -- from our standpoint, we have the
23 concern of compliance with the Court's injunction, which
24 has been a concern for us ever since the initial
25 disclosure of the 108,000 pre-injunction EAD grants that

10:32:13

1 happened in March.

2 THE COURT: Let me stop you with -- I mean, if I
3 understood what Mr. Gilligan just said, they basically
4 have accounted for or brought into compliance all but 11
5 individuals; and they are working on those 11.

10:32:37

6 And so, while I'm not satisfied with substantial
7 compliance either, they have done a substantial amount of
8 work to bring everybody back into compliance and have
9 given us assurances that the outstanding 11 individuals
10 will be brought back into compliance.

10:32:59

11 I mean, I guess in a way I'm asking you what else can
12 they do?

13 MS. COLMENERO: With respect to the 2,600 and the
14 remediation efforts as well as the disclosure of the PII
15 to the plaintiff states we believe the issues have been
16 resolved pretty much with the 2,600 post-injunction
17 violations.

10:33:14

18 And I think that our concern is just ongoing
19 compliance going forward and this potential that there may
20 be additional problems that are discovered in the future,
21 which we just feel at this point that there should be --
22 we should be assured of compliance with the injunction and
23 we shouldn't have to -- there shouldn't be these issues
24 coming up where we find 53 additional individuals out of
25 the Nebraska Service Center.

10:33:32

10:33:46

1 And we have reiterated our concerns with compliance
2 many times before, Your Honor; and so we have requested,
3 you know, many options, some of which include a reporting
4 requirement or an external compliance monitor to at least
5 ensure that they are, in fact, complying with the Court's
6 injunction.

10:34:03

7 THE COURT: Okay. Here is -- well, shift over
8 and talk to me about the notification issue that you have
9 with Ms. Ricketts as far as corrective action by the
10 states.

10:34:25

11 MS. COLMENERO: Yes, Your Honor. Ms. Ricketts is
12 correct. This issue came up in the negotiations with the
13 agreed protective order regarding the disclosure of the
14 personally identifiable information related to the 2,600
15 individuals.

10:34:35

16 There was the request that a reporting requirement be
17 included in the order. The plaintiff states objected to
18 that, and we felt that that was an unnecessary oversight
19 due to the fact that the plaintiff states really did
20 nothing wrong here and we're merely trying to determine
21 whether or not we need to undertake any corrective action
22 and whether or not it's worth the cost and effort that,
23 obviously, we will never recover for those efforts.

10:34:50

24 THE COURT: Does this current proposed order have
25 notification requirements?

10:35:07

1 MS. COLMENERO: It does not. And so then the
2 request shifted to could you just send us an e-mail.

10:35:21

3 We feel that any type of notification requirement to
4 the Federal Government is unnecessary here because the
5 protective order itself requires the plaintiff states to
6 use the most up-to-date information to conduct
7 remediations.

10:35:36

8 So if the concern is accuracy, that is accounted for
9 in the order. And there should also be no issues
10 regarding accuracy given that the personally identifiable
11 information originated from the defendants' own records.
12 And the plaintiff states intend to conduct these accuracy
13 checks using the SAVE databases for those agencies that
14 do, in fact, use them.

10:35:54

15 But in a state as large as Texas, I'm sure Your Honor
16 can imagine, we have numerous state agencies that are
17 here; and the burden placed on the plaintiff states to
18 notify the Federal Government any time it decides to take
19 any action related to the PII is onerous given the state
20 of circumstances as they exist right now because this is
21 really a process the plaintiff states did not anticipate
22 taking in this case.

10:36:11

23 THE COURT: All right. Let me resolve this, both
24 of these issues.

10:36:24

25 One, I am not going to -- I don't think the states

1 need to give any kind of notice to the Federal Government
2 of corrective action.

3 And secondly, Mr. Gilligan, I would like a status
4 report on September 25th as to the status of that. That's
10:36:59 5 a week after your hopeful deadline of the 18th.

6 And then, I would like another status report, which
7 I'm hoping will be very short, on May 25th, 2016. And by
8 status I'm talking about are we in compliance with the
9 injunction.

10:37:27 10 So I would think by the next six months that would be
11 "We're in compliance. Nothing has happened that would put
12 us out of compliance." I mean, it could be a paragraph, I
13 hope.

14 All right. Now let's shift gears. As far as I'm
10:37:54 15 concerned, that puts to bed anything post injunction. I
16 mean --

17 MS. COLMENERO: We agree, Your Honor.

18 THE COURT: Ms. Ricketts, is there anything you
19 would --

10:38:01 20 MS. RICKETTS: (Shaking head side to side.)

21 THE COURT: Okay. Let's talk about
22 pre-injunction. All right. I understand there were
23 various issues where -- let me ask you, Ms. Colmenero,
24 since you have the podium right now.

10:38:27 25 What do you think the issues are outstanding, setting

1 aside the fact -- well, maybe I should ask this: Is it
2 the states' position that they should recall all 108,000
3 and replace them, the three-year with a two-year?

10:38:49 4 MS. COLMENERO: It is, Your Honor. And I think
5 the way the states see it is that we grouped the 108
6 pre-injunction grants together with the discovery disputes
7 stemming from this Court's April 7th order because those
8 in many ways relate to the misrepresentations that
9 occurred during the preliminary injunction proceeding.

10:39:08 10 And so, the way we look at these 108,000
11 pre-injunction grants is we do view them as a violation of
12 the Court's February 16th injunction. And we believe that
13 the defendants should go back and unwind these benefits
14 and provide that personally identifiable information to
10:39:27 15 the plaintiff states for the plaintiff states to determine
16 whether or not any corrective action measures are
17 necessary on their end.

18 THE COURT: Short of redoing all 108,000, what
19 other issues do the states have with the Federal
10:39:42 20 Government that need to be resolved?

21 MS. COLMENERO: There are the discovery disputes
22 from -- stemming from the Court's April 7th order which
23 related to the assertions of privilege on the information
24 that Your Honor had requested in its order.

10:39:58 25 And so, if I can kind of propose a solution to the

1 Court from the plaintiffs' perspective that could kind of
2 wrap this issue up. The plaintiff states would -- if the
3 defendants would agree to take similar remediation efforts
4 as they did for the 2,600 individuals and these
10:40:17 5 remediation efforts would apply to the 108,000 individuals
6 who got the pre-injunction EADs, the plaintiff states
7 would be content for this Court to not rule on the
8 privilege ascertain disputes and the additional discovery
9 that the plaintiff states have sought in response to the
10:40:36 10 Court's April 7th order.

11 And the reason being is that in our mind a remediation
12 of these 108,000 individuals would serve as a remedy for
13 the misrepresentations that were the subject of the
14 Court's order.

10:40:49 15 THE COURT: And by remediation, I mean, what
16 steps do you -- are you -- do you think they ought to
17 take?

18 MS. COLMENERO: We understand that they took some
19 swift action with respect to the 2,600 post-injunction
10:41:04 20 individuals but we now know that there is a process in
21 place that can happen and there is a remediation effort
22 that can occur and we think that there should be a similar
23 remediation effort that occurs with the 108 but we
24 wouldn't -- I mean, obviously, we can work on the timeline
10:41:21 25 issue with them.

1 We understand they were responding quickly to Your
2 Honor's July 7th order. So they took extraordinary steps
3 in order to fix those issues. But every day that those
4 three-year EADs remain on their databases there are
5 individuals who are seeking benefits from the plaintiff
6 states. There is an outward representation that
7 three-year terms are, in fact, authorized on what is now
8 an enjoined directive.

9 THE COURT: Okay. Let me play devil's advocate
10 with you and I say, okay, Ms. Colmenero, setting aside the
11 fact that we may have mislead the states as to what was
12 going on between November 20th and February 16th -- and,
13 you know, I'm not making an argument you haven't heard
14 before, I'm sure -- we didn't violate the injunction
15 because there was no injunction. How can we violate an
16 injunction that doesn't exist?

17 MS. COLMENERO: And our response is -- and we
18 have identified this in the joint status report filed by
19 both parties. But the way we read the Court's February
20 16th injunction is it has enjoined the defendants from
21 implementing any and all aspects of the expanded DACA
22 program.

23 And so, in the six months since the injunction was
24 issued the defendants have continued to maintain databases
25 and records reflecting the granting of three-year terms of

1 deferred action under a now enjoined directive.

2 And while these three-year terms were issued prior to
3 the Court's February 16th injunction, the continued
4 maintenance of these three-year authorizations and the
10:43:05 5 databases and records which are used by state agencies to
6 query the Federal Government for information related to an
7 individual's immigration status is, in fact, contrary to
8 the February 16th injunction provision barring
9 implementation in any and all aspects.

10:43:21 10 And so, we do believe the defendants lack the
11 authority to continue to represent on an ongoing basis
12 that three-year terms are authorized.

13 THE COURT: You don't think that perhaps runs
14 afoul of some kind of retroactivity, retroactive
10:43:36 15 application of an injunction?

16 MS. COLMENERO: We don't believe so, Your Honor,
17 because just as they are taking these extraordinary
18 efforts to call back these 11 EAD cards that exist with
19 these individuals there is still an outward representation
10:43:50 20 that exists by the 108,000 also having these EAD cards and
21 using them for future benefits for -- which would allow
22 them to get benefits on a three-year term if we were
23 talking about driver's licenses in the plaintiff states.

24 THE COURT: Well, I understand that. But, I
10:44:05 25 mean, I guess it's no secret what I'm asking you. I'm

1 troubled by the fact that you don't -- help me with the
2 legal distinction. I think there is a legal distinction
3 of violating an order that is in effect with perhaps
4 violating the spirit of what was represented to somebody
5 but the order wasn't in effect.

10:44:30

6 I mean, doesn't the fact that the order was signed
7 change a lot of things?

8 MS. COLMENERO: I see your point, Your Honor; and
9 I think those are kind of two distinct arguments in our
10 mind. You know, I think you can look at the 108 and
11 really tie those to the -- what the parties understood
12 what is happening during the pendency of the preliminary
13 injunction and tie those to the misrepresentations that
14 occurred.

10:44:44

15 I do think that the proposal that we propose to the
16 Court would, in fact, address that harm because I think
17 the whole reason we got to these discovery disputes, we
18 got to the Court's April 7th order, was because of the
19 misrepresentation.

10:44:58

20 And if they had corrected to what we believe was a
21 status quo at the time that the preliminary injunction was
22 ongoing and those proceedings were happening, I don't
23 think we ever would have reached to the point of the
24 misrepresentations as well as these discovery disputes
25 that arose from the Court's April 7th order.

10:45:10

10:45:26

1 THE COURT: So what you are suggesting is I could
2 do that not as a violation -- I mean, the power of the
3 Court is not to protect its own injunction order. It's
4 almost as a sanction for misrepresenting the facts to the
5 Court.

10:45:45

6 MS. COLMENERO: I don't want to call it a
7 sanction. I think what we proposed in our initial filings
8 with the Court back in March was we wanted to seek early
9 discovery to determine what potential remedies that we may
10 want to propose to the Court. We have kind of reached
11 this point where there are these discovery disputes, but I
12 think the reason we have these disputes between us related
13 to the 108 is all based on this idea that there is a
14 status quo that was being maintained that wasn't being
15 maintained.

10:46:14

16 But if we could -- if we reverted back to the status
17 quo, which is the 108 are remediated, plaintiff states
18 provided with the PII related to those 108, then I do
19 believe that that resolves the plaintiff states disputes
20 that were part of our initial motion for early discovery
21 that we filed with the Court back in March.

10:46:30

22 THE COURT: Ms. Ricketts, do you want to weigh in
23 to this?

24 MS. RICKETTS: Your Honor, this is an area that
25 actually is both Mr. Gilligan's and mine. So I'll take a

10:46:43

1 first crack at it.

2 My understanding of the point of the meet and confer
3 was that the Government -- we could provide to the states
4 information so that they could determine what harm they
10:46:59 5 suffered and whether they wanted to request remediation.
6 I do appreciate they have now requested remediation.

7 But if that is the case, if they are asking as either
8 a violation of the injunction or in any other way to undo
9 the 108, we certainly would ask for the opportunity to
10:47:16 10 brief that so that they could demonstrate the harm that
11 they have suffered and we could have an opportunity to
12 brief what, if any, remedy might be appropriate in this
13 instance.

14 That was our understanding of the point of the meet
10:47:29 15 and confer. So I do not understand that we have any
16 dispute regarding requested information. The only dispute
17 remaining seems to be what action, further action then we
18 should be taking. We have provided them all the
19 information that they have requested to date.

10:47:49 20 THE COURT: Ms. Colmenero, will you -- both of
21 you all just stay there.

22 MS. COLMENERO: Thank you. We had understood --
23 and maybe this was just a misunderstanding during our very
24 hurried meet and confers -- that with respect to the 108,
10:48:06 25 yes, they did provide us with some information in terms of

1 potential impact on the states, which was the
2 state-by-state breakdown, as well as a driver's license
3 SAVE query number. But in our mind that was not --

10:48:24

4 THE COURT: Tell me what you mean by a driver's
5 license SAVE query number.

6 MS. COLMENERO: These would have been the number
7 of queries done through the Federal Government SAVE
8 databases from Texas driver's licenses facilities.

10:48:36

9 THE COURT: Okay. But how does that -- how is
10 that helpful?

11 MS. COLMENERO: It doesn't really tell us a whole
12 lot other than there were individuals who came to Texas
13 driver's license facilities who fell within the 108,000
14 category of individuals who potentially got driver's
15 licenses from the state for three-year terms.

10:48:51

16 So it does give us some indication in terms of the
17 impact on the plaintiff states but doesn't necessarily
18 provide a road map in terms of the processes the states
19 would put in place to undergo any kind of corrective
20 action because we don't have personally identifiable
21 information for any particular individual within the class
22 of the 108,000.

10:49:09

23 MS. RICKETTS: And if I might, Your Honor, our
24 understanding was that we provided all of that specific
25 information for the 2,600 so the states could, in fact,

10:49:21

1 make that determination on a smaller scale. They have the
2 numbers on a larger scale for the 108.

3 And the value, from our perspective of the SAVE
4 queries for the driver's licenses, is presumably states
10:49:38 5 would only be taking corrective action for licenses or
6 benefits that had a validity period for more than two
7 years. And it is tough to find a license or a benefit
8 that has a validity period for longer than two years other
9 than driver's licenses and, perhaps, bar licenses.

10:49:56 10 And so the driver's license SAVE query information
11 seemed the most relevant for the states to make that
12 determination.

13 THE COURT: Well, how does that help them? I
14 mean, what do they do with that?

10:50:02 15 MS. RICKETTS: What they would do is determine
16 whether they think they have suffered harm. They would
17 have the number -- not necessarily the number of driver's
18 licenses that have been provided, it's true; but it would
19 be a ballpark number of the queries that were made by the
10:50:17 20 state agency for the purposes of determining whether to
21 provide a driver's license number.

22 THE COURT: And so they would use the cost of the
23 inquiry as a damage figure?

24 MS. RICKETTS: I don't know, Your Honor,
10:50:32 25 honestly.

1 THE COURT: That's why I'm trying to figure out
2 why that helps them.

3 MS. COLMENERO: We don't find it particularly
4 helpful. Having the personal identifiable information
10:50:41 5 which they are going to provide to us as part of the 2,600
6 is, in fact, the most accurate kind of information for us
7 to develop processes and protocols.

8 Because I'll tell Your Honor this has never happened
9 before in Texas where we have to go back and unfix these
10:50:56 10 types of licenses and undergo this type of remediation
11 effort. So we actually need to ensure that we have the
12 most accurate information possible in order to ensure that
13 we have the appropriate individual who is being queried
14 within our own system.

10:51:12 15 MS. RICKETTS: And again, we're at the beginning
16 stage of that because we have not yet provided to Texas
17 the personally identifiable information for the 2,600.
18 Some of this might be then speculative.

19 I have no sense of what is most valuable from Texas'
10:51:26 20 perspective, I will readily admit. We have been trying to
21 provide the information they have requested, and I believe
22 we have provided the information they have requested.

23 But we had understood this would be a staged process
24 that they would receive the significant and very sensitive
10:51:41 25 information for the 2,600 to make a determination as to

1 what next steps they would propose. We had anticipated
2 that would be through briefing, but they would have all of
3 the information then to make an argument to Your Honor as
4 to what next steps should be taken and why, what harm they
10:51:56 5 have suffered and how it would be remedied -- how it would
6 be appropriately remedied from their perspective and we
7 would have that opportunity to respond.

8 MS. COLMENERO: And, Your Honor, if I may, I
9 think from our perspective we're proposing a solution such
10:52:12 10 that we can end this dispute not only related to the
11 discovery issues that are still outstanding but also the
12 -- any type of remedy that might be available for the
13 108,000.

14 THE COURT: Ms. Colmenero, let me ask you this:
10:52:27 15 Let's assume I order the Federal Government to do that.
16 They are going to provide you with the names, addresses or
17 whatever; and they send them to you. I mean, what is the
18 next step? What happens then?

19 MS. COLMENERO: We need to look at the personally
10:52:40 20 identifiable information, talk to the appropriate state
21 agencies, develop protocols, processes to determine what
22 type of remediation we need to undertake; and I think
23 similar to the remediation efforts that the Federal
24 Government has undergone in terms of exchanging cards for
10:52:58 25 driver's licenses, for example, we would probably have to

1 go through similar efforts ourselves.

2 THE COURT: So, hypothetically, the State of
3 Texas would -- when it issued -- well, maybe I need to
4 understand the process better when, let's say, one of the
10:53:20 5 DACA folks with a two-year work authorization comes in and
6 wants a driver's license and Texas gives them a driver's
7 license with a two-year expiration date.

8 MS. COLMENERO: Uh-huh.

9 THE COURT: Is that a yes?

10:53:36 10 MS. COLMENERO: Well, it would depend upon
11 whether or not that individual fell within the 2,600 post
12 injunction.

13 THE COURT: No. No. No. I'm talking about not
14 any. Not the 108,000. Not the --

10:53:47 15 MS. COLMENERO: Okay.

16 THE COURT: I'm talking about, let's say, in
17 2013, before this ever came up.

18 MS. COLMENERO: Okay. That individual comes to a
19 Texas driver's license facility. They present a form of
10:53:58 20 identification that shows that they are lawfully present
21 in the U.S. We take that form of identification. We
22 query the Federal Government's SAVE database to ensure
23 that they are, in fact, here lawfully present for the
24 amount of time that sets forth on that document.

10:54:15 25 THE COURT: And then you give them a license for

1 how long?

2 MS. COLMENERO: For two years.

3 THE COURT: Okay.

4 MS. COLMENERO: The amount of time they are here
10:54:21 5 lawfully present.

6 THE COURT: All right. Now, if they have a
7 three-year authorization do they get a license for three
8 years?

9 MS. COLMENERO: If they are queried through the
10:54:30 10 SAVE database and confirmed that they are, in fact, here
11 for three years, we would issue a temporary license for
12 three years.

13 THE COURT: All right. And so what you are
14 saying is if, say, out of this 108,000, 15,000 are in
10:54:42 15 Texas, Texas would then go through all 15,000 people and
16 say, okay, instead of a two-year license -- I mean, a
17 three-year license, here is a two-year license, send us
18 back your three-year license?

19 MS. COLMENERO: We would correct our records
10:55:00 20 internally and determine how best to go about exchanging
21 the actual cards that have been issued to those
22 individuals.

23 MS. RICKETTS: One thing I would note, Your
24 Honor, if I might. For the SAVE queries I would just note
10:55:18 25 that the query information we provided for the 108 is

1 likely an overestimate of those who might have received a
2 driver's license; and certainly not all of those who
3 received the three-year EADs had SAVE queries in Texas or,
4 frankly, in any state. So it is a smaller number than
5 those who received the three-year EADs, and it is a
6 smaller number still from the SAVE query numbers because
7 some of those queries were multiple queries.

8 If I could channel Mr. Schwei who couldn't be here
9 today because of a family emergency, I could perhaps
10 explain to you why that is. I can't right at this moment.
11 But it is an overestimate.

12 THE COURT: Don't channel Mr. Schwei. Please
13 don't do that.

14 All right. Here is where I am. I am soliciting help
15 from both sides. I know, Ms. Colmenero, you have
16 basically said here is one solution.

17 The way I look at it is I can open this up to
18 discovery, which is how this first came up, which was a
19 request to do discovery.

20 And what I'm trying to figure out is why I would do
21 that. And I don't mean justification why. I mean what
22 does it eventually accomplish? I mean, it's either -- I
23 have tried to play out the scenario in my head.

24 We're either going to go through the discovery
25 process, the states are going to -- and, really, the

1 discovery process that I anticipated may be different,
2 Ms. Colmenero, than what you are talking about because I
3 was concerned, quite frankly, about the misrepresentations
4 made to the Court. And it sounds like the states are more
10:57:24 5 concerned, and maybe rightfully so, with the 108,000 and
6 who they are and where they are. And I can see that, but
7 I am not sure where that gets us. I mean, that's one
8 scenario though.

9 The second scenario is I just do nothing.

10:57:54 10 And the third scenario is, you know, I say all right
11 I'm just going to decide this as a sanctions motion and
12 decide whether or not sanctions are appropriate given the
13 representations that were made before the Court that were
14 not accurate.

10:58:25 15 And if so, then I have got to come up with an
16 appropriate remedy. And, I mean, I hear you say your
17 remedy is for me to order the Government to redo all
18 108,000 of them. I'm not sure I necessarily buy into that
19 but I mean -- Ms. Ricketts, I mean, assuming
10:58:52 20 hypothetically the Court was inclined to issue some kind
21 of sanctions, what would be an appropriate sanction?

22 MS. RICKETTS: I was actually voting for Door
23 No. 2, Your Honor.

24 THE COURT: The do nothing door?

10:59:05 25 MS. RICKETTS: The do nothing door.

1 THE COURT: The door where Carol Merrill is
2 standing.

3 MS. RICKETTS: I would be happy to be there.
4 That would be my generation, as well.

10:59:14

5 Your Honor, obviously, we don't believe that a
6 sanction like that is appropriate; but we would want the
7 opportunity to brief that. Again, our understanding is
8 that the states would need to demonstrate the harm that
9 they have suffered. It was why we provided voluntarily so

10:59:28

10 much sensitive information to them. We believe that is
11 the information they asked for, and we assumed it was --
12 at least I had understood it was for that very purpose to
13 determine what harm they had suffered and what remedy they
14 thought was appropriate. We would like the opportunity to
15 brief that before the Court would order any particular
16 sanction or remedy.

10:59:43

17 Also, if you don't mind, Your Honor -- I am stepping
18 on Mr. Gilligan's toes in this topic. If you don't mind
19 if I check with him if there is anything else he has to
20 add?

10:59:59

21 THE COURT: Well, if he has got a fifth solution
22 or a fourth solution, I am willing to listen.

23 MS. RICKETTS: I think he will vote for Door
24 No. 2, as well.

11:00:06

25 MR. GILLIGAN: Your Honor, I think I have been

1 given a hint to select Door No. 2, as well; but I would
2 just say, Your Honor, regarding the question of a sanction
3 for miscommunications that we had earlier with the Court
4 regarding the implementation of the three-year grants of
5 deferred action under the 2012 guidelines, again, we
6 apologize for those miscommunications. We regret them.
7 They were inadvertent and unintended for all the reasons
8 we have explained in our prior filings.

9 THE COURT: I know, but they were repeated on at
10 least three different occasions.

11 MR. GILLIGAN: Yes, Your Honor. But consider
12 what happened when we first learned of the 108,000 cases
13 as is reflected in the public documents, the privilege log
14 and the metadata chart. We responded immediately to
15 provide the Court that information.

16 The filing, the March 3rd advisory, was drafted,
17 reviewed and filed in just about 24 hours. There was no
18 delay in bringing that to the Court's attention. And I
19 think the urgency with which we got that document on file
20 also reflects the fact that we weren't trying to hide
21 anything from the Court in the first place.

22 There are, of course, other circumstances which we
23 have discussed in our prior filings which go to show that
24 the issue of the ongoing grants was simply something that
25 didn't cross our minds when people were focused on the

1 harm that the states had asserted during the preliminary
2 injunction proceedings, which was the harm from additional
3 categories of individuals becoming eligible for deferred
4 action and, therefore, state benefits, not people who were
5 already eligible under the 2012 guidelines.

11:01:58

6 But ultimately I think -- while I can respond to a
7 number of the points the state has made, our position is
8 that any question of remediation as some sort of a
9 sanction, particularly retrieving 108,000 cards, is
10 something that needs to be briefed; and it would need to
11 be predicated, Your Honor, with some sort of demonstration
12 of harm by the plaintiff states.

11:02:22

13 Equity is proportional, Your Honor. It's not
14 punitive. It does not require that a party make
15 tremendous efforts that -- be required to make tremendous
16 expenditures of time and effort and public resources
17 because of an innocent mistake, at least where there has
18 been no showing of appreciable harm to another party or
19 that there would be any benefit that would accrue from the
20 effort that's being made.

11:02:39

11:02:59

21 We also -- we, of course, agree with the view that
22 there is a difference between something that occurred
23 after the injunction and something that occurred and was
24 completed beforehand. We are talking here about cases
25 where the adjudication was made and all the databases were

11:03:19

1 updated and the cards were issued prior to the Court's
2 injunction.

3 And there is a difference here, and we would want to
4 elaborate upon this in further briefing. There is a
11:03:34 5 difference between a continuing violation of an injunction
6 and the continuing effects of past acts that occurred
7 beforehand.

8 THE COURT: How do we know there is 108,000?

9 MR. GILLIGAN: I believe that that -- that is an
11:03:50 10 issue I haven't looked at closely in a while, Your Honor,
11 because we have moved on to other things. It is based on
12 queries of the agency's principle database of these kinds
13 of records, the CLAIMS 3 system.

14 MS. COLMENERO: And if I may, Your Honor, just
11:04:07 15 interject here. I think from the plaintiff states
16 perspective the Inspector General's report that was filed
17 with this Court earlier this week at least in our opinion
18 suggests that it's hard to know whether or not there is
19 actually 108,000 that occurred before the injunction
11:04:26 20 happened.

21 The Inspector General's report states that the data
22 was unreliable that USCIS used; and based on the
23 information it reviewed, even the Inspector General cannot
24 say with confidence the exact number of three-year EADs
11:04:40 25 issued after the injunction.

1 So, you know, we talk about the 108,000 pre-injunction
2 grants; but I think there is even a question as to if
3 that's truly an accurate number.

4 MR. GILLIGAN: Your Honor, I have just been
11:04:52 5 advised that as part of the agency's own ongoing,
6 self-monitoring, self-evaluation that the Office of
7 Performance and Quality has verified that the 108,000
8 number is correct.

9 Regarding the Inspector General's report, which the
11:05:11 10 principle conclusion of which was that the initial 2,100
11 that we were talking about earlier, post-injunction
12 three-year EADs, were issued inadvertently and not
13 intentionally, what the Inspector General had to say about
14 the reliability of the data we don't want to -- you know,
11:05:36 15 we don't want to take issue with the Inspector General.
16 But they stated that the data was unreliable because they
17 couldn't confirm the numbers they had been provided by the
18 agency, but they didn't explain what the basis was of
19 that.

11:05:49 20 So we're uncertain why they considered the data
21 unreliable. They refer to the fact that we were finding
22 additional groups of cards that had been re-mailed or
23 issued after the injunction. But that's not, in our
24 minds, an indication of unreliability. That's simply a
11:06:07 25 reflection of the fact that when you ask the system

1 different questions it gives you different answers.

2 The 2,100 were the result of a query about EADs that
3 had been produced after the injunction; and when the
4 Office of Performance and Quality was at the Director's
11:06:26 5 instruction conducting an audit of that number to make
6 sure we had found them all, they asked a different query
7 were there any re-mailed after the injunction. And that
8 different question then revealed a different answer.

9 So to us it's not a data quality issue. It's a
11:06:43 10 question of understanding the complexities of the systems
11 that the agency has.

12 But to bring it back to the question of remediation,
13 what the plaintiffs are asking here is that DHS be
14 required to take what we did in order to get the 2,500 or
11:07:07 15 2,600 cases taken care of and those cards returned and to
16 scale that effort up by a factor of 40 times, from 2,600
17 to 108,000. That's a tremendous undertaking.

18 And yet to date there has been no demonstration of
19 harm by the states. Perhaps, you know, the PII will have
11:07:30 20 something to do with that. But as it stands it seems to
21 us that if we're going to do an equitable balancing here
22 of what burden is on one party or the other there is no
23 basis, no showing at this time that could justify the kind
24 of remedial efforts the states are suggesting.

11:07:52 25 And if it's going to be entertained, it's something

1 that we feel that the legal issues should be briefed and
2 the factual issues there should be a record made on those.

3 THE COURT: Do you have a response,
4 Ms. Colmenero?

11:08:09 5 MS. COLMENERO: Very briefly, Your Honor. I
6 think we would not opt for Door No. 2 but opt for a
7 combination of perhaps Door No. 1 or Door No. 3, which is
8 -- you are correct, Your Honor.

9 We were -- we are concerned about the
11:08:21 10 misrepresentations that were made during the pendency of
11 the preliminary injunction proceeding. We understood that
12 the status quo was going to remain the same; and it did,
13 in fact, change.

14 And we have previously argued to this Court that the
11:08:34 15 states have been irreparably harmed by the change in the
16 status quo; and I think that's evident by these
17 post-injunction violations given the fact that now the
18 state has, you know, its own remediation efforts that they
19 need to consider taking that are going to require time and
11:08:52 20 expense that are unrecoverable.

21 So there is direct harm to the plaintiff states by the
22 issuance of the three-year EADs, especially with a
23 directive that is now enjoined.

24 And so, we propose a solution which is, essentially, a
11:09:06 25 return of the status quo, which is what we anticipated had

1 always been occurring during the pendency of the
2 preliminary injunction. And I think if there was a return
3 to such a status quo through a remediation by the
4 defendants I think that would resolve these outstanding
5 discovery disputes that were related to the
6 misrepresentations.

7 THE COURT: Say that last sentence again.

8 MS. COLMENERO: I said I think if there was -- if
9 the defendants undertook similar remediation efforts as to
10 the 108 it would essentially be a return to the status
11 quo, which means no more three-year EADs exist out there,
12 which would resolve the discovery disputes at least from
13 the plaintiff states perspective that relate to the
14 misrepresentations that occurred.

15 THE COURT: Let me ask you this -- and I know we
16 have states on one side and we have the Federal Government
17 on this side. But in the middle of all this is 108,000
18 individuals. I mean, should I take their well-being into
19 account?

20 MS. COLMENERO: You could --

21 THE COURT: I mean, they didn't do anything
22 wrong.

23 MS. COLMENERO: I agree.

24 THE COURT: Other than perhaps being in the
25 country illegally. But, I mean, as far as they are

1 concerned they applied just like they were told to apply;
2 and they got a three-year extension. And, oh, boy, I
3 don't have to reapply for three years instead of two
4 years.

11:10:35

5 MS. COLMENERO: I agree, Your Honor, that they
6 are kind of the victim of kind of what's happened with
7 respect to this change in the status quo that happened
8 during the pendency of the preliminary injunction
9 proceedings.

11:10:48

10 However, from the plaintiff states perspective we want
11 to ensure that our records are, in fact, correct and that
12 we issue licenses for individuals who are, you know, here
13 to be -- who are lawfully here in the United States.

11:11:07

14 And we do believe that by maintaining these three-year
15 terms on a now enjoined directive that when those
16 individuals come to the plaintiff states and seek a term
17 driver's license, for example, that we're now issuing
18 licenses on a now enjoined directive for that period of
19 time.

11:11:20

20 And so, we believe that if those records were
21 corrected, which is what we would want, that that from our
22 perspective is the best-case scenario.

11:11:37

23 MR. GILLIGAN: Your Honor, I do believe your
24 question hits on the question of the public interests in
25 all this. And certainly we would agree that the 108,000

1 individuals who at least in respect to these matters have
2 done nothing wrong should be taken into account as well as
3 the public interests. We are talking about public
4 resources on both sides of the equation here and I --

11:11:56

5 THE COURT: Well, I think that would -- I mean,
6 we have taxpayers of 26 states over here; and we have
7 taxpayers of all 50 states over here. And that's one of
8 the reasons I'm trying to resolve this and bring this
9 portion of this litigation to an end.

11:12:14

10 MR. GILLIGAN: Indeed, Your Honor. You know, the
11 states -- you know, we hear the states speak in abstract
12 terms about the efforts required to convert driver's
13 licenses from three years to two years and so forth and
14 there are remedial efforts but we -- there is no record as
15 yet on the extent to which any such efforts are necessary
16 among this group of 108,000 and whether any benefits to
17 the states that would accrue from the Federal Government
18 going to the time and effort and expense of retrieving
19 these cards would justify the tremendous effort that would
20 be required to do that, again, on a scale of 40 times what
21 we have already done with respect to the 2,600.

11:12:54

22 THE COURT: Is there some record somewhere
23 located in some computer that has a list of all 108,000 or
24 can be programmed to provide a list of all 108,000?

11:13:25

25 (Sotto voce discussion between defense counsel.)

1 MR. GILLIGAN: I'm advised by knowledgeable
2 co-counsel that we have information, yes, to that effect,
3 Your Honor.

11:13:42

4 THE COURT: All right. Anything either side
5 wants to add?

6 MS. COLMENERO: Not right now, Your Honor.

7 THE COURT: All right. Here is what I want, and
8 I'm not ordering you to do this. I'm -- if you want to do
9 this.

11:14:13

10 Assuming, hypothetically, the Court finds that facts
11 were misrepresented to it, I want to know what sanctions
12 you think I can order.

11:14:47

13 And secondarily, again, hypothetically, if the Court
14 were to conclude that sanctions were appropriate of some
15 kind for the misrepresentations made to the Court, what
16 should those sanctions be?

17 And if you will have those on file by the 4th of
18 September.

11:15:13

19 Let me say right off the bat so that there is no need
20 for flowery, assuming arguendo language that I understand
21 that the defendants opt for Door No. 2 and that it's their
22 position that there should be no sanctions. And I
23 understand that. So I am -- nothing you say is going to
24 be an admission in any way that sanctions are appropriate.

11:15:42

25 I'm assuming -- I'm trying to make things easy for

1 you. If you choose to file something, you don't have to
2 put a bunch of flowery language saying we don't think
3 there ought to be sanctions because I know that's your
4 position.

11:15:57

5 And this doesn't have to be an encyclopedia. I mean,
6 it can be short and sweet and to the point.

11:16:28

7 And after that, I will decide what to do. But I have
8 made it clear, I think, it's my intention to resolve this
9 matter so that one way or the other, however the appellate
10 courts rule, that it's not lingering.

11:16:59

11 I will sign the protective order today. Regardless of
12 the -- how I rule on this other issue, Mr. Gilligan, I
13 still am -- the issue of a certification of where we are
14 as of September 18th and as of next May 18th, that's
15 remaining in place. All right?

16 MR. GILLIGAN: Understood, Your Honor. We're
17 happy to do that.

11:17:17

18 THE COURT: Okay. Let me just say one other
19 thing with regard to any kind of future motions. I
20 understand the time pressures that everybody is under
21 sometimes. I don't find it good advocacy to arbitrarily
22 put deadlines on a Court. In fact, I have never heard of
23 it. I have never seen it before this case. It's now
24 happened twice in this case.

11:17:47

25 I don't think there is a Court -- there may be, but I

1 know there isn't in Texas -- that has as heavy a docket as
2 mine. And so I rule on things as promptly as I can. And
3 I don't think I have left any stones unturned in this
4 case.

11:18:05 5 I mean, even the opinion I wrote on the injunction,
6 you know, I was given a February 18th deadline; and I had
7 it out by February 16th.

8 Now, fortunately for me and for this community, Judge
9 Olvera is riding to my rescue. His investiture will be
11:18:31 10 next week. And so I'll get some help. But I promise both
11 sides that I will try to rule on things as promptly as
12 possible.

13 I will readily admit this issue I find troubling both
14 in terms of -- well, I have already stated my concerns on
11:18:53 15 this; and I stated at the last hearing how I don't
16 necessarily take any joy in considering any kind of
17 sanctions against attorneys who are in the heat of battle
18 representing their clients.

19 But get whatever you want to on file by September 4th,
11:19:26 20 and I plan to dispose of this issue so that once the Fifth
21 Circuit rules we either can proceed on the merits or
22 everything will be over one way or the other and whichever
23 side wins or loses can go talk to the Supreme Court.

24 All right. Thank you all.

25 (Proceedings concluded at 11:19.)

1 Date: August 21, 2015

2 **COURT REPORTER'S CERTIFICATE**

3
4 I, Laura Wells, certify that the foregoing is a
5 correct transcript from the record of proceedings in the
6 above-entitled matter.

7
8 /s/ Laura Wells

9 Laura Wells, CRR, RMR

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